

Civil No. BO 68401

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 4

GERALD ARMSTRONG,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES,

Respondent.

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Real Party in Interest.

Preliminary Memorandum of Points and
Authorities in Opposition to Petition
for Writ of Mandate

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Blvd.,
Suite 2000
Los Angeles, CA 90028
(213) 661-4030

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street,
Suite 450
San Francisco, CA 94104
(415) 391-3900

Attorneys for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

HUB LAW OFFICES

AUG 01 1992

RECEIVED

Civil No. BO 68401
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

GERALD ARMSTRONG,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES,

Respondent.

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Real Party in Interest.

Preliminary Memorandum of Points and
Authorities in Opposition to Petition
for Writ of Mandate

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Blvd.,
Suite 2000
Los Angeles, CA 90028
(213) 661-4030

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street,
Suite 450
San Francisco, CA 94104
(415) 391-3900

Attorneys for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

I. INTRODUCTION

The Petition for Writ of Mandate filed by defendant-petitioner Gerald Armstrong should be denied. The Petition seeks review of an order overruling a demurrer, and asks this Court to determine the validity of a 1986 settlement agreement. In overruling that demurrer, the trial court specifically ruled that it did not address the validity of the contract and that that issue could properly be raised subsequently. [Ex. R to Petition, p. 424.] Instead of permitting the discovery process to go forward and then litigating this issue in orderly fashion at the Superior Court level, Armstrong seeks to have the Appellate Court determine -- de novo and without the benefit of a factual record -- the validity of the settlement contract.

Armstrong has not shown that the decision from which he seeks a Writ was incorrect or an abuse of discretion. To grant review at this time would waste the time and resources of this Court and would remove from the hands of the Superior Court a matter which will be litigated at the trial court level.

II. INTERLOCUTORY REVIEW IS INAPPROPRIATE IN THIS CASE

Armstrong's Petition complains that the trial court refused to consider, on demurrer, whether or not the contract violated public policy. The lower court correctly took the position that such a determination was unnecessary and inappropriate on demurrer where the issue is whether a complaint on its face states a valid cause of action. [C.C.P. §430.30.] The trial court ruled that Respondent's First Amended Complaint passes that test and Armstrong

is now free to litigate his "public policy" hypothesis in future trial court proceedings. There is no reason to burden the Court of Appeal with the task of adjudicating this issue before it has been fully and adequately briefed and litigated below.

Moreover, Armstrong has neglected to inform this Court that he has already extensively briefed and lost this issue several times in this case. Armstrong first argued his "public policy hypothesis" before Judge Dufficy of the Superior Court for the County of Marin, where the case was originally filed. That Court granted Respondent's application for a Temporary Restraining Order on March 5, 1992. Armstrong briefed and argued the issue again when, on March 24, 1992, Judge Dufficy extended the TRO while the case was transferred to Los Angeles. Giving his argument a third run, Armstrong extensively briefed and argued this position before Judge Ronald Sohigian, presiding in the Superior Court for the County of Los Angeles. Once again he was unsuccessful and Judge Sohigian granted Respondent's motion for a Preliminary Injunction on May 28, 1992.¹ Finally, in bringing his demurrer, Armstrong extensively briefed the public policy argument before Judge David Horowitz. Judge Horowitz overruled Armstrong's demurrer on July 1, 1992. It is clear that several courts and jurists have already reviewed Armstrong's "public policy" argument and found it wanting on its

¹ On July 23, 1992, Armstrong filed a Notice of Appeal regarding the grant of Respondent's Motion for Preliminary Injunction. That appeal will, of necessity, raise identical issues to those covered in his Petition for Writ of Mandate. This redundancy and duplicative work is further reason why the Court should deny the Petition for Writ of Mandate.

face.

Additionally, Armstrong's interests are fully protected while the contract's validity is litigated below. First, Judge Sohigian has issued a precise and tightly worded preliminary injunction. [See, Exhibit R to Petition.] Second, plaintiff has posted a substantial bond. Finally, the case itself is narrow and limited in scope. It can be litigated rapidly to a final resolution, at which time, if Armstrong is still dissatisfied, he will be able to pursue an appeal.

III. CONCLUSION

Armstrong's Petition seeks a review on an incomplete record of an issue which is being put prematurely before this Court. He has offered no valid reason why the Petition must be taken up now. He has shown no harm that will arise if the case is litigated to completion and he then must raise the fully ripened issue on appeal. He has shown no abuse of discretion by the trial court nor any jeopardy to his personal interests which warrant a granting of the Petition. This Court, therefore, should await a full record following trial, and summarily deny Armstrong's Petition.

Dated: July 30, 1992

Respectfully Submitted,

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, CA 90028.

On July 30, 1992, I served the foregoing document described as Preliminary Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate on interested parties in this action as follows:

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Paul Morantz BY U.S. MAIL
P.O. Box 511
Pacific Palisades, CA 90272

Ford Greene BY U.S. MAIL
Hub Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

Los Angeles Superior Court BY U.S. MAIL
111 N. Hill Street
Los Angeles, CA 90012

[x] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid

at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on July 30, 1992 at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressee.

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)